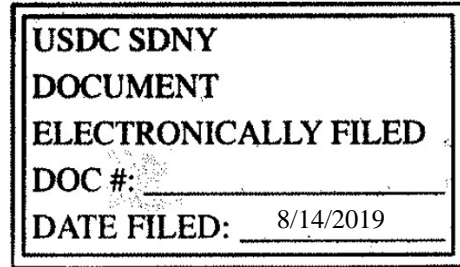


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
UNITED STATES OF AMERICA, :
:
-against- :
:
SAYFULLO HABIBULLAEVIC SAIPOV, :
:
Defendant. :
:
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17-CR-722 (VSB)

ORDER

VERNON S. BRODERICK, United States District Judge:

I am in receipt of Defendant’s July 26, 2019 request for an additional thirty minutes of phone calls with his immediate family per month, (Doc. 195), as well as the Metropolitan Correctional Center’s (“MCC”) August 9, 2019 opposition thereto, (Doc. 198). I understand that the Government takes no position as to Defendant’s request. (*See* Doc. 195, at 2.)

Pursuant to the terms of the Special Administrative Measures (“SAMs”) governing Defendant’s pretrial confinement, Defendant must receive a minimum of one phone call with his immediate family per month; so long as that requirement is satisfied, “[t]he quantity and duration of [Defendant]’s non-legally privileged telephone calls with his immediate family members shall be set by the USMS/BOP/DF.” (*See* Doc. 56-1, § 3(a)(ii).) In an Opinion & Order dated January 14, 2019, I denied Defendant’s constitutional challenge to the SAMs, subject to two revisions of the attorney–client provisions that are not at issue here. (Doc. 108.)

Federal Bureau of Prisons (“BOP”) policy requires that inmates housed in the Special Housing Unit (“SHU”), as Defendant is, be permitted one phone call per month. (*See* Doc. 198, at 1 (citing BOP Program Statement No. 5270.11, *Special Housing Units*).) MCC’s policy—which permits SAMs inmates either one thirty-minute social call or two fifteen-minute calls per

month—in fact exceeds the minimum requirements established by BOP. (*See id.* at 1–2.)

Defendant seeks an increase in his allotted immediate family telephone calls per month, on the grounds that (1) MCC’s policy is not connected to any “legitimate penological goal;” (2) Defendant has generally been unable to take advantage of his allotted in-person visits with his immediate family; (2) Defendant’s “past, present, and future relationship with his immediate family is an essential feature of his mitigation case.” (Doc. 195.)

A challenged institutional regulation will be deemed valid “if it is reasonably related to legitimate penological interests.” *Turner v. Safley*, 482 U.S. 78, 89 (1987). To determine the validity of such a regulation, courts must consider whether (1) there is a “valid rational connection” between the regulation and the purported government interest; (2) alternative means of exercising the asserted constitutional right remain available; (3) accommodation of the right asserted by the inmate will have a significant impact “on guards and other inmates, and on the allocation of prison resources generally”; and (4) there is an absence of ready alternatives to the regulation. *Id.* at 89–91.

Applying these factors to MCC’s policy limiting all SAMs inmates to thirty minutes of social telephone calls per month, I find the policy to be reasonably related to legitimate penological interests. Taking into consideration, as I must, the “professional expertise of corrections officials,” *Bell v. Wolfish*, 441 U.S. 520, 548 (1979) (internal quotation marks omitted), I find there is a rational connection between limiting the frequency and duration of SAMs inmates’ social calls and the safety and security of MCC; that permitting Defendant additional phone time would impact other inmates, staff, and prison resources; and that ready alternatives are not available. As MCC explained, “social calls for all inmates, including those in SHU, are for security reasons limited to 15 minutes by the BOP’s Inmate Telephone System

(‘ITS’),” and any modifications “require an override of the ITS by MCC New York staff.” . (Doc. 198, at 1 n.1.) As the MCC also explained, SHU/SAMs calls are staff-intensive and divert resources from MCC’s Special Investigative Services (“SIS”) Department, which is responsible for protecting the safety of inmates, staff, and the public by, among other things, investigating inmate misconduct, monitoring institutional video cameras, reviewing inmate emails and calls, and engaging in searches for contraband. Each telephone call for a SAMs inmate requires the participation of staff from two MCC departments (the SHU Unit Team and the SIS Department) before, during, and following the call, and is therefore resource-intensive. In addition, there are several other SAMs inmates currently housed at MCC who are subject to the same social call restrictions and I find that disturbing MCC’s uniform policy with respect to Defendant’s telephone calls will likely spur similar requests from other SAMs inmates, which could further impact MCC’s limited resources.

Although Defendant is the only current SAMs inmate at MCC potentially facing the death penalty, I find that Defendant has various alternative means of exercising his constitutional right to develop mitigation evidence reflecting his close relationship with his family. Defendant is currently entitled to a phone call with his parents and siblings and another call with his wife and children each month and, although his wife and children have not visited him “frequently” given their out-of-state residence, (Doc. 195, at 1–2), he has not gone without in-person family visits. He may also communicate with his immediate family in writing. Moreover, Defendant fails to cite any case law to support his claim that the currently allotted duration and frequency of his social calls with his immediate family violate the Constitution.

For the foregoing reasons, Defendant’s request for additional monthly phone calls with his immediate family is DENIED.

SO ORDERED.

Dated: August 14, 2019
New York, New York

A handwritten signature in black ink, reading "Vernon Broderick". The signature is written in a cursive style with a large, stylized "V" and "B".

Vernon S. Broderick
United States District Judge